

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-5-15
FAMILY FIRST ADMINISTRATIVE DISQUALIFICATION HEARINGS**

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1240-5-15-.01 DISQUALIFICATION HEARINGS FOR INTENTIONAL PROGRAM VIOLATIONS.

- (1) The Department shall conduct administrative disqualification hearings for individuals accused of intentional program violations in accordance with the requirements outlined in this Chapter.
- (2) An Administrative Disqualification Hearing shall be initiated by the Department in cases in which the Department has sufficient evidence to substantiate that an individual has committed one or more acts of intentional program violation as defined by Rule 1240-1-53-.01.
- (3) The Department may initiate an Administrative Disqualification Hearing regardless of the current eligibility of the individual.

Authority: T.C.A. §§ 4-5-202, 71-1-105(12), 71-3-120 and 71-3-151 – 71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110. **Administrative History:** Original rule filed April 15, 1993; effective May 30, 1993. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-15-.02 ADVANCE NOTICE OF HEARING.

- (1) *Written Notice.* The Department shall provide written notice to the individual suspected of intentional program violation at least thirty (30) days in advance of the date a Disqualification Hearing initiated by the State agency has been scheduled. The notice shall be mailed certified mail, return receipt requested, or be provided by any other method as long as proof of receipt is obtained, and it shall contain at a minimum:
 - (a) The date, time, and place of the hearing;
 - (b) The charge(s) against the individual;
 - (c) A summary of the evidence, and how and where the evidence can be examined;
 - (d) A warning that the decision will be based solely on information provided by the Department of Human Services if the individual fails to appear at the hearing without good cause;
 - (e) A statement that the individual or representative may request a continuance of the hearing;
 - (f) A statement that the individual or representative will have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;
 - (g) A warning that a determination of intentional program violation will result in a six-month disqualification for the first violation, a twelve-month disqualification for the second violation,

(Rule 1240-5-15-.02, continued)

and permanent disqualification for the third violation and a statement of which penalty the Department believes is applicable to the case scheduled for a hearing;

- (h) A statement that the hearing does not preclude the State or Federal Government from prosecuting the household member for an intentional program violation in a civil or criminal court action nor from collecting the overpayment;
 - (i) A listing of individuals or organizations that may provide free legal representation to the individuals alleged to have committed intentional program violations;
 - (j) A statement of the accused individual's right to remain silent concerning the charge(s) and that anything said or signed by the individual concerning the charge(s) may be used against him or her in a court of law; and
 - (k) A statement that the individual may waive his or her right to appear at the administrative hearing.
- (2) *Waiver Of Disqualification Hearing.* The agency will prepare a form entitled Waiver of Administrative Disqualification Hearing which shall be mailed with each Advance Notice of Hearing specified above which include at a minimum:
- (a) The date that the signed waiver must be received by the state agency and a signature block for the accused individual along with a statement that the caretaker relative must also sign the waiver if the accused individual is not a caretaker relative with an appropriate designated signature block;
 - (b) A statement of the accused individual's rights to remain silent concerning the charge(s) and that anything said or signed by the individual concerning the charge(s) may be used against him or her in a court of law;
 - (c) The fact that waiver of the individual's right to appear at a Disqualification Hearing may result in a disqualification penalty and a reduction in the assistance payment for the appropriate period even if the accused individual does not admit to the facts as presented by the state agency; and
 - (d) An opportunity for the accused individual to specify whether or not he or she admits to the facts as presented by the state agency.

Authority: T.C.A. §§ 4-5-202, 71-1-105(12); 71-3-120 and 71-3-151–71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110. **Administrative History:** Original rule filed April 15, 1993; effective May 30, 1993. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-15-.03 DISQUALIFICATION HEARINGS PROCEDURES.

- (1) *Scope.* Administrative Disqualification Hearings held under this Chapter shall be conducted by one of this Department's hearing officers pursuant to TCA §4-5-301(a)(2) and (c) and Chapter 1240-5-5, or by administrative judges employed with the Department of State under TCA §4-5-301(d) if agreement between the two departments is reached. Said hearing officer or administrative judge shall be impartial with no previous involvement in the intentional program violation cases before him or her.
- (2) *Consolidation of Actions.* An administrative disqualification hearing conducted under this Chapter may be consolidated with an individual's fair hearing governed by 45 CFR § 205.10, and must consolidate with a Food Stamp administrative disqualification hearing under 7 CFR Part 273, where the circumstances which give rise to the hearing are the same or related, and where the individual

(Rule 1240-5-15-.03, continued)

- receives prior notice of the consolidation. The Department may designate the same hearing officer to preside at such a consolidated hearing.
- (3) *Continuance Of Hearing.*
- (a) An accused individual or representative may request a continuance of the hearing provided that the request is made ten (10) days prior to the scheduled hearing.
 - (b) The hearing may not be continued for more than thirty (30) days.
 - (c) The hearing officer may limit the number of continuance to one.
- (4) *Medical Assessments.* Medical assessments shall be obtained at the Department's expense and made a part of the hearing record, if the hearing officer deems it necessary.
- (5) *Individual's Rights To Discovery And Presentation Of Case.* The accused individual or his/her representative shall have adequate opportunity to:
- (a) Examine the contents of his/her case file and all documents and records to be used by the agency at the hearing, at a reasonable time before the date of the hearing, and during the hearing;
 - (b) Present his/her case alone or with the aid of an authorized representative, to bring witnesses, establish all pertinent facts and circumstances, and to advance any arguments without undue influence; and
 - (c) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
- (6) *Hearing Decisions.*
- (a) Hearing Officers shall enter Initial Orders pursuant to *TCA §4-5-314* and rule 1240-5-5-.04 after conducting administrative disqualification hearings, and such Initial Order shall be based exclusively on evidence and other material introduced at the hearing.
 - (b) The Initial Order entered in such cases shall become this Department's Final Order unless the Initial Order is reviewed under *TCA §4-5-315*. An individual found to have committed an intentional program violation shall be informed within the Initial Order of his/her rights to request reconsideration of, or to appeal said Initial Order.
 - (c) The Initial Order of the Commissioner, or his/her designated representative, must be entered in such administrative disqualification hearings within ninety (90) days of the date of the advance written notice referred to in rule 1240-5-15-.02(l)(a) unless a continuance has been granted for good cause shown.
 - (d) The Department's Initial Order which finds that an accused individual committed an intentional program violation shall inform the individual of the decision and the reason for the decision.

Authority: *T.C.A. §§ 4-5-202, 71-1-105(12); 71-3-120 and 71-3-151 - 71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110. Administrative History:* Original rule filed April 15, 1993; effective May 30, 1993. Amendment filed February 26, 2007; effective May 12, 2007.